

04/12/2004  
P.W. 24

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DEBORAH CHIN, Individually and On Behalf ) Civil Action No. 04-CV-10294-DPW  
of All Others Similarly Situated, )  
Plaintiff, )  
vs. )  
SONUS NETWORKS, INC., et al., )  
Defendants. )

MICHELLE TREBITSCH, On Behalf of ) Civil Action No. 04-CV-10307-DPW  
Herself and All Others Similarly Situated, )  
Plaintiff, )  
vs. )  
SONUS NETWORKS, INC., et al., )  
Defendants. )

[Caption continued on following page.]

GLOBAL UNDervalued SECURITIES MASTER FUND'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO CONSOLIDATE CASES FOR  
ALL PURPOSES AND FOR AN ORDER REQUIRING PRESERVATION OF DOCUMENTS

INFORMATION DYNAMICS, LLC, On Behalf of Itself and All Others Similarly Situated,	) Civil Action No. 04-CV-10308-DPW
Plaintiff,	) <u>CLASS ACTION</u>
vs.	)
SONUS NETWORKS, INC., et al.,	)
Defendants.	)
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PETER KALTMAN, On Behalf of Himself and All Others Similarly Situated,	) Civil Action No. 04-CV-10309-DPW
Plaintiff,	) <u>CLASS ACTION</u>
vs.	)
SONUS NETWORKS, INC., et al.,	)
Defendants.	)
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SAMANTHA DEN, Individually and On Behalf of All Others Similarly Situated,	) Civil Action No. 04-CV-10310-DPW
Plaintiff,	) <u>CLASS ACTION</u>
vs.	)
SONUS NETWORKS, INC., et al.,	)
Defendants.	)
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RICHARD CURTIS, Individually and On Behalf of All Others Similarly Situated, ) Civil Action No. 04-CV-10314-MLW  
vs. )  
Plaintiff, )  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
RONALD KASSOVER, On Behalf of the Ronald Kassover IRA and All Others Similarly Situated, ) Civil Action No. 04-CV-10329-DPW  
vs. )  
Plaintiff, )  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
STEVE L. BAKER, Individually and On Behalf of All Others Similarly Situated, ) Civil Action No. 04-CV-10333-DPW  
vs. )  
Plaintiff, )  
SONUS NETWORKS, INC., et al., )  
Defendants. )

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[Caption continued on following page.]

MICHAEL KAFFEE, Individually and On Behalf of All Others Similarly Situated, ) Civil Action No. 04-CV-10345-DPW  
Plaintiff, )  
vs. )  
CLASS ACTION  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
HAIMING HU, Individually and On Behalf of All Others Similarly Situated, ) Civil Action No. 04-CV-10346-DPW  
Plaintiff, )  
vs. )  
CLASS ACTION  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
CHARLES STARBUCK, Individually and On Behalf of All Others Similarly Situated, ) Civil Action No. 04-CV-10362-DPW  
Plaintiff, )  
vs. )  
CLASS ACTION  
SONUS NETWORKS, INC., et al., )  
Defendants. )

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[Caption continued on following page.]

SAMUEL HO, Individually and On Behalf of ) Civil Action No. 04-CV-10363-DPW  
All Others Similarly Situated, )  
Plaintiff, ) CLASS ACTION  
vs. )  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
\_\_\_\_\_  
JEFFREY C. RODRIGUES, Individually and ) Civil Action No. 04-CV-10364-DPW  
On Behalf of All Others Similarly Situated, )  
Plaintiff, ) CLASS ACTION  
vs. )  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
\_\_\_\_\_  
ROBERT CONTE and MARK RESPLER, ) Civil Action No. 04-CV-10382-DPW  
Themselves and On Behalf of All Others )  
Similarly Situated, ) CLASS ACTION  
Plaintiffs, )  
vs. )  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
\_\_\_\_\_

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WHEATON ELECTRICAL SERVICES RETIREMENT 401K PROFIT SHARING PLAN, On Behalf of Itself and All Others Similarly Situated,	)	Civil Action No. 04-CV-10383-DPW
	)	<u>CLASS ACTION</u>
Plaintiff,	)	
vs.	)	
SONUS NETWORKS, INC., et al.,	)	
Defendants.	)	
<hr/>		
BRIAN CLARK, Individually and On Behalf of All Others Similarly Situated,	)	Civil Action No. 04-CV-10454-DPW
	)	<u>CLASS ACTION</u>
Plaintiff,	)	
vs.	)	
SONUS NETWORKS, INC., et al.,	)	
Defendants.	)	
<hr/>		
SHEILA BROWNELL, Individually and On Behalf of All Others Similarly Situated,	)	Civil Action No. 04-CV-10597-DPW
	)	<u>CLASS ACTION</u>
Plaintiff,	)	
vs.	)	
SONUS NETWORKS, INC., et al.,	)	
Defendants.	)	
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SAVERIO PUGLIESE, On Behalf of Himself ) Civil Action No. 04-CV-10612-DPW  
and All Others Similarly Situated, )  
Plaintiff, ) CLASS ACTION  
vs. )  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
DAVID V. NOCITO, On Behalf of Himself ) Civil Action No. 04-CV-10623-DPW  
and All Others Similarly Situated, )  
Plaintiff, ) CLASS ACTION  
vs. )  
SONUS NETWORKS, INC., et al., )  
Defendants. )  
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## I. INTRODUCTION

On December 22, 1995, Congress enacted the Private Securities Litigation Reform Act of 1995 (“PSLRA”), which, among other things, provides for consolidation of actions. The PSLRA provides, in pertinent part:

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title ... has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination [of appointment of lead plaintiff under §21D(a)(3)(B)(i)] until after the decision on the motion to consolidate is rendered.

15 U.S.C. §78u-4(a)(3)(B)(ii).

The PSLRA sets up a two-step process where more than one action on behalf of a class asserting virtually the same claims has been filed. The Court “shall” first decide the consolidation issue and thereafter decide the lead plaintiff issue “[a]s soon as practicable” after the consolidation motion has been decided. *Id.*

Presently pending in this district are 19 related securities class action lawsuits (the “Actions”) against Sonus Networks, Inc., et al. (“Sonus” or the “Company”). Given the common questions of fact and law presented by the 19 Actions, plaintiffs urge the Court to consolidate the Actions pursuant to Fed. R. Civ. P. 42(a).

<b>Abbreviated Case Name</b>	<b>Case Number</b>	<b>Date Filed</b>
<i>Chin v. Sonus Networks, Inc., et al.</i>	04-CV-10294-DPW	February 12, 2004
<i>Trebitsch v. Sonus Networks, Inc., et al.</i>	04-CV-10307-DPW	February 13, 2004
<i>Information Dynamics, LLC v. Sonus Networks, Inc., et al.</i>	04-CV-10308-DPW	February 13, 2004
<i>Kaltman v. Sonus Networks, Inc., et al.</i>	04-CV-10309-DPW	February 13, 2004
<i>Den v. Sonus Networks, Inc., et al.</i>	04-CV-10310-DPW	February 13, 2004
<i>Curtis v. Sonus Networks, Inc., et al.</i>	04-CV-10314-MLW	February 13, 2004
<i>Kassover v. Sonus Networks, Inc., et al.</i>	04-CV-10329-DPW	February 17, 2004

<b>Abbreviated Case Name</b>	<b>Case Number</b>	<b>Date Filed</b>
<i>Baker v. Sonus Networks, Inc., et al.</i>	04-CV-10333-DPW	February 18, 2004
<i>Kaffee v. Sonus Networks, Inc., et al.</i>	04-CV-10345-DPW	February 20, 2004
<i>Hu v. Sonus Networks, Inc., et al.</i>	04-CV-10346-DPW	February 20, 2004
<i>Starbuck v. Sonus Networks, Inc., et al.</i>	04-CV-10362-DPW	February 23, 2004
<i>Ho v. Sonus Networks, Inc., et al.</i>	04-CV-10363-DPW	February 23, 2004
<i>Rodrigues v. Sonus Networks, Inc., et al.</i>	04-CV-10364-DPW	February 23, 2004
<i>Conte, et al. v. Sonus Networks, Inc., et al.</i>	04-CV-10382-DPW	February 26, 2004
<i>Wheaton Electrical Servs. Ret. 401K Profit Sharing Plan v. Sonus Networks, Inc., et al.</i>	04-CV-10383-DPW	February 26, 2004
<i>Clark v. Sonus Networks, Inc., et al</i>	04-CV-10454-DPW	March 3, 2004
<i>Brownell v. Sonus Networks, Inc., et al.</i>	04-CV-10597-DPW	March 31, 2004
<i>Pugliese v. Sonus Networks, Inc., et al.</i>	04-CV-10612-DPW	March 30, 2004
<i>Nocito v. Sonus Networks, Inc., et al.</i>	04-CV-10623-DPW	March 31, 2004

## II. SUMMARY OF ACTIONS

The Actions allege a common course of conduct by a common set of defendants under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Securities and Exchange Commission (“SEC”) Rule 10b-5, promulgated thereunder, 17 C.F.R. §240.10b-5. The Actions name Sonus and certain of its officers and/or directors as defendants. The class actions are all brought on behalf of all persons who purchased Sonus securities during the period between April 9, 2003 and February 12, 2004 (the “Class Period”).

Sonus is a provider of voice infrastructure solutions for the new public network. The Company’s products are a new generation of carrier-class switching equipment and software that enable voice services to be delivered over packet-based networks. Throughout the Class Period, Sonus reported and projected surging financial results purportedly stemming from increased demand for the Company’s products.

In connection with the release of Sonus' financial results, defendants issued a series of public statements during the Class Period designed to increase investor confidence in the Company and the price of Sonus' stock. On April 9, 2003, Sonus announced that for its first quarter 2003, revenues increased 27% sequentially and loss narrowed to \$0.02 per share. The Company attributed its purported success to precise management and its addition of new customers on a global basis. During an interview with CNNfn a few days later, defendant Hassam M. Ahmed similarly stated that Company success would continue as a result of a growing customer base that would further infuse capital into Sonus.

On July 14, 2003, Sonus issued a press release for its second quarter 2003 financial results. The Company reported that both revenues and net loss per share improved as compared to both its 1Q03 and its 2Q02. Specifically, revenues for 2Q03 were \$21.4 million compared with \$16.0 million for 1Q03 and \$21.3 million for 2Q02. Net loss for the 2Q03 was \$3.2 million compared to a net loss of \$4.4 million for 1Q03 and a net loss of \$17.8 million for 2Q02. In a *Bloomberg* press release issued a few days later, defendant Ahmed confirmed that the Company was "driving toward profitability as fast as we can."<sup>1</sup> During its 2Q02 conference call and again in an August 1, 2003 press release, Sonus also stated that it expected revenues for its third quarter 2003 results to increase by 15%-20% over reported 2Q03 revenues.

On October 8, 2003, Sonus issued a press release for its 2Q03 financial results, in which it reported that its revenue increased 34% sequentially and 285% over the previous year. The Company also reported earnings of \$2.35 million, or a penny a share, compared to a loss of \$14.6

<sup>1</sup> Unless otherwise indicated, all paragraph ("¶") or ("¶¶") references are to the complaint captioned *Information Dynamics, LLC v. Sonus Network, Inc., et al.*, Case No. 04-CV-10308-DPW, filed on February 13, 2004.

million, or \$0.08 a share, for 2Q02. Sonus surpassed analysts' expectations of a loss of a penny a share for the Company's 3Q03. As a result, shares of Sonus rose \$0.27 to \$8.30, and further rose to \$8.93 a share in after-hours trading that day. In a *Bloomberg* press release issued the next day, defendant Ahmed claimed that the Company was able to "consistently grow our top line, our revenues" through the addition of major new customers and careful management of expenses. ¶24. Moreover, Sonus provided guidance for the following quarter, expecting earnings to be about the same as 3Q03 and revenues to grow by 10%-15%.

On January 20, 2004, however, Sonus reported that it would delay release of its fourth quarter 2003 results pending the completion of an audit. ¶27. Then, on February 11, 2004, the Company shocked investors when it revealed that improper revenue recognition during 2003, and possibly earlier, would further delay release of the Company's financial statement for its year end 2003 and cause the Company to reassess its already reported financial statements for the applicable periods. On this news Sonus' stock price collapsed below \$6 per share on extraordinary volume. ¶4.

On March 29, 2004, Sonus issued a press release entitled "Sonus Networks Provides Update on Status of Its Financial Results." The release stated that the Company, "having made substantial progress towards the completion of its review of 2003 and 2002 financial results, is now considering whether to expand the review to include additional prior periods." The release went on to state:

Sonus Networks is performing a detailed review of the timing of revenue recognized from customer transactions and of other financial statement accounts. The revenue issues under examination relate to the proper timing of revenue recognition and not whether the sales could ultimately be recorded as revenue. For the customer transactions under review, the products have been delivered and Sonus Networks has either received payment or is receiving payment for the products in the ordinary course.

At this time, the Company expects that its review will lead to a restatement of historical financial statements for the fiscal year ended December 31, 2002 and for the first three quarters of fiscal year 2003. As a result, existing financial statements for those periods should not be relied upon. Sonus Networks does not expect that

these restatements will impact its December 31, 2003 cash, cash equivalents and marketable securities balance, which exceeded \$300 million.

\* \* \*

As a result of the Company's delay in filing its Form 10-K for 2003, Sonus Networks expects to receive notification from Nasdaq that it is not in compliance with the filing requirements for continued listing on Nasdaq and that its securities could be subject to delisting from the Nasdaq National Market.

The following day, on March 30, 2004, Sonus issued a release entitled "Sonus Networks Receives Expected Notice Related to Late Filing for Its Form 10-K." The release stated in part "that consistent with the information provided in its press release on March 29, 2004, the Company has received a Nasdaq Staff Determination. The letter indicate[d] that because the Company has not timely filed its Form 10-K for the fiscal year ended December 31, 2003, it is not in compliance with the Nasdaq continued listing requirements set forth in Nasdaq Marketplace Rule 4310(c)(14)." The Company then stated that it "will request a hearing with the Nasdaq Listing Qualifications Panel within seven days of the date of the Determination for continued listing on the Nasdaq National Market. Sonus Networks' securities will remain listed on the Nasdaq National Market pending the outcome of the hearing. There can be no assurance that the Panel will grant a request for continued listing."

Ultimately, Sonus will have to admit that it improperly recognized revenue for 4Q03 and FY03 and restate results for those periods to remove millions in improperly reported revenues so that their financial statements comply with Generally Accepted Accounting Principles ("GAAP") and SEC rules.

Because the Company's stock was trading at artificially inflated levels due to financial results achieved through improper revenue recognition, defendants were able to complete a public offering of 20 million shares on April 22, 2003, through which over \$60 million was raised. Further, the improper revenue recognition allowed defendants Edward N. Harris, Paul R. Jones and J. Michael

O'Hara to illegally profit by selling tens of thousands of shares of artificially inflated Sonus stock during the Class Period. Investors, on the other hand, were left holding the bag, losing millions of dollars on their investment in Sonus as a result of defendants' wrongful conduct.

### **III. ARGUMENT**

#### **A. This Court Should Consolidate the Actions**

When actions involving common questions of law or fact are pending before a court, it may order a joint hearing or trial of any or all the matters at issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. *See Fed. R. Civ. P. 42(a).*

This Court has the discretion to consolidate cases relating to the same subject matter and any related case later filed in this Court or otherwise transferred or removed to this Court. *Seguro de Servicio de Salud v. McAfee Sys. Group, Inc.*, 878 F.2d 5, 8 (1st Cir. 1989); *In re PRI Automation, Inc. Sec. Litig.*, 145 F. Supp. 2d 138, 140 (D. Mass. 2001).

The 19 Actions pending before this Court present virtually identical factual and legal issues, and each names Sonus and virtually the same officers and directors as defendants. Each of the actions allege violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder and raise the following common questions of law and fact:

1. Whether the federal securities laws were violated by defendants' acts as alleged herein;
2. Whether the statements disseminated to the investing public and securities markets by defendants misrepresented and/or omitted material facts necessary to make the statements not misleading;
3. Whether defendants knew or had reasonable grounds to believe that their statements were false and misleading;

4. Whether the market price of Sonus' securities during the Class Period was artificially inflated due to the misrepresentations and/or non-disclosures alleged; and

5. The extent of damages suffered by members of the class.

Courts have consistently recognized that securities class actions are, in particular, ideally suited for consolidation pursuant to Fed. R. Civ. P. 42, because their unification expedites pretrial proceedings, reduces case duplication, avoids the harassment of parties and witnesses from inquiries in multiple proceedings, and minimizes the expenditure of time and money by all persons concerned.

*In re Equity Funding Corp. of Am. Sec. Litig.*, 416 F. Supp. 161, 176 (C.D. Cal. 1976) (citing *Garber v. Randell*, 477 F.2d 711, 714 (2d Cir. 1973)). Consolidating multi-shareholder class action suits simplifies pretrial and discovery motions, class action issues, and clerical and administrative management duties. Moreover, consolidation will reduce the confusion and delay that may result from prosecuting related class action cases separately. *Id.*

Consolidation of related actions is proper and appropriate even if the defendants named are not identical and the alleged class periods differ. In granting a motion for consolidation, the court in *Lloyd v. Indust. Bio-Test Labs., Inc.*, 454 F. Supp. 807 (S.D.N.Y. 1978), stated:

Indeed, this action and *Desimone* differ only in that (1) plaintiff here purchased Syntex options rather than Syntex common stock, (2) the putative class period here is slightly shorter than that in *Desimone*, and (3) three individual defendants named in *Desimone* are not named here. The legal and factual issues in both actions are otherwise identical. We, therefore, conclude that the two suits involve "common question[s] of law or fact."

*Id.* at 812 (citation omitted). Similarly, in *In re Food Fair Sec. Litig.*, 465 F. Supp. 1301 (J.P.M.L. 1979), the Judicial Panel on Multidistrict Litigation found that related cases which include class action allegations, which differed only in purported length of the class period, involve common questions of law and fact and may properly be transferred and consolidated.

**IV. THIS COURT SHOULD ORDER THE PRESERVATION OF DOCUMENTS**

Global Securities also requests that the Court order the preservation of documents relating to the consolidated actions in accordance with 15 U.S.C. §78u-4(b)(3)(C)(i), both prior to and after the filing of any motion to dismiss. In complex securities cases involving companies with numerous employees, such an order is appropriate and will prevent the loss of key documents, whether through inadvertence or otherwise.

**V. CONCLUSION**

For the above reasons and in order to promote judicial economy, plaintiffs respectfully request that the Court consolidate the above-referenced related actions and order the preservation of documents.

DATED: April 12, 2004

Respectfully Submitted,

MELICK, PORTER & SHEA, LLP  
RICHARD J. SHEA (BBO 456310)  
JOHN E. DeWICK (BBO 654723)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by mail on 4/12/04





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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.
2. That on April 12, 2004, Declarant served GLOBAL UNDervalued SECURITIES MASTER FUND'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO CONSOLIDATE CASES FOR ALL PURPOSES AND FOR AN ORDER REQUIRING PRESERVATION OF DOCUMENTS by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.
3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of April, 2004, at San Diego, California.



SHARON E. FORD

**SONUS NETWORKS-CA**

Service List - 4/6/2004 (04-0069)

Page 1 of 5

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**SONUS NETWORKS-CA**

Service List - 4/6/2004 (04-0069)

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Service List - 4/6/2004 (04-0069)

Page 4 of 5

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Page 5 of 5

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